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BEFORE THE ARIZONA CORPORATION CC  
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COMMISSIONERS

JEFF HATCH-MILLER, CHAIRMAN

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2005 APR 25 P 4:44

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE FORMAL  
COMPLAINT OF ACCIPITER  
COMMUNICATIONS, INC. AGAINST  
VISTANCIA COMMUNICATIONS, L.L.C.,  
SHEA SUNBELT PLEASANT POINT, L.L.C.  
AND COX ARIZONA TELCOM, LLC.

Docket No. T-03471A-05-0064

Arizona Corporation Commission

DOCKETED

APR 25 2005

STAFF'S MOTION TO COMPEL

DOCKETED BY

KJ

Staff of the Arizona Corporation Commission ("Commission Staff") hereby moves to compel Cox Arizona Telcom, LLC ("Cox Telcom") to respond to Staff's First Set of Data Requests in this matter.

I. Discussion

On March 8, 2005, Staff of the Arizona Corporation Commission ("ACC Staff") sent Cox Arizona Telcom, LLC ("Cox Telcom") its First Set of Data Requests in this matter, attached hereto as Exhibit 1. Cox Telcom has failed to respond to any of those requests to-date which were due on March 18, 2005.

In a Procedural Order dated April 15, 2005, Staff was ordered to file by May 6, 2005, a pleading in response to the legal arguments raised in Accipiter's Complaint and the various responsive pleadings of Cox and Accipiter. Staff was also directed to respond to the jurisdictional claims raised by Vistancia Communications ("Vistancia") and Shea Sunbelt. It is important that Staff receive the responses from Cox Telcom in order to respond to the arguments raised in the Complaint as well as the responsive pleadings of Cox Telcom and Accipiter. The information requested will assist Staff in learning more about all aspects of the arrangements between Cox Telecom, CoxCom, Vistancia and Shea Sunbelt, as well as the City of Peoria. This will be critical to

1 responding to some of the allegations made by Accipiter as well as Cox Telcom's and Vistancia's  
2 arguments that the Commission lacks jurisdiction.

3 Staff counsel has had several conversations with counsel for Cox Telcom regarding the  
4 outstanding data requests. Cox Telcom initially requested additional time due to the need to complete  
5 its responses to the Department of Justice Civil Investigative Discovery. Counsel for Cox Telcom  
6 indicated several times, however, that the Company would begin immediately providing non-  
7 confidential responses on a "rolling basis". However, to-date, Staff has not received any responses  
8 from Cox Telcom. Cox has most recently promised to get its responses to Staff by Friday of this  
9 week. However, since time is now running short and Cox Telcom has not kept some of its earlier  
10 commitments, Staff has no option but to file this Motion to Compel.

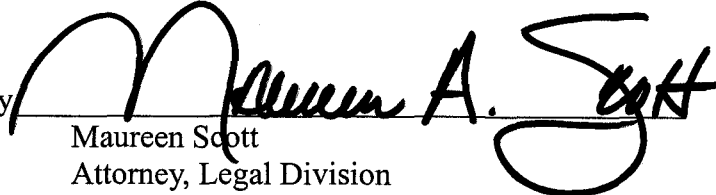
11 Cox Telcom has also requested that Staff enter into a Protective Agreement in this Docket to  
12 cover proprietary information. Staff has signed a Protective Agreement along with an Amendment to  
13 cover "Highly Confidential" information and has sent those documents to the Company today. Thus,  
14 there is no longer any impediment to the Company providing all of its responses at this time. Staff  
15 seeks an order from the Commission directing Cox Telcom to immediately submit responses to  
16 Staff's First Set of Data Requests.

17 **II. Conclusion.**

18 Staff respectfully requests that the Hearing Division schedule, on an expedited basis early  
19 next week in the event that Cox Telcom does not respond to all outstanding Staff discovery by Friday  
20 of this week, a procedural conference on Staff's Motion.

21 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of April, 2005.

22  
23  
24 By

  
Maureen Scott  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007  
Telephone (602) 542-3402

1 Original and 13 copies of the foregoing  
2 filed this 25<sup>th</sup> day of April, 2005,  
3 with:

4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, AZ 85007

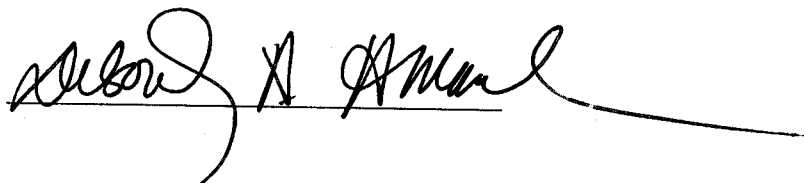
8 Copy of the foregoing was faxed this  
9 25<sup>th</sup> day of April, 2005, and mailed  
10 26<sup>th</sup> day of April, 2005 to:

11 Martin A. Aronson, Esq.  
12 William A. Cleaveland, Esq.  
13 Morrill & Aronson  
14 One East Camelback Road, Suite 340  
15 Phoenix, AZ 85012-1648  
16 Counsel for Accipiter Communications, Inc.

17 Charles V. Gowder, President  
18 Accipiter Communications, Inc.  
19 2238 Loan Cactus Drive, Suite 100  
20 Phoenix, AZ 85027

21 Michael W. Patten, Esq.  
22 Roshka Heyman & DeWulf, P.L.C  
23 One Arizona Center  
24 400 East Van Buren Street, Suite 800  
25 Phoenix, AZ 85004  
26 Counsel for Cox Arizona Telcom

27 Michael M. Grant, Esq.  
28 Gallagher & Kennedy, PA  
2575 E. Camelback Road  
Phoenix, AZ 85016-9225  
Attorneys for Shea and Vistancia Communications



# EXHIBIT 1

## COMMISSIONERS

JEFF HATCH-MILLER- CHAIRMAN  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES



BRIAN C. MCNEIL  
Executive Secretary

## ARIZONA CORPORATION COMMISSION

March 8, 2005

*By email and United States Mail*  
[mpatten@rhd-law.com](mailto:mpatten@rhd-law.com)

Michael W. Patten, Esq.  
ROSHKA HEYMAN & DEWULF, PLC  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

RE: Staff's First Set of Data Requests to Cox Arizona Telcom, LLC regarding the Formal Complaint of Accipiter Communications, Inc. Against Vistancia Communications, LLC, Shea Sunbelt Pleasant Point, LLC and Cox Arizona Telcom, LLC.  
Docket No.: T-03471A-05-0064

Dear Mr. Patten:

Please treat this as Staff's First Set of Data Requests to Cox Arizona Telcom, LLC, in the above-referenced matter.

For purposes of this data request set, the words "Cox", "you" and "your" refer to Cox Arizona Telcom, and any representative, including every person and/or entity acting with, under the control of, or on behalf of Cox Arizona Telcom.

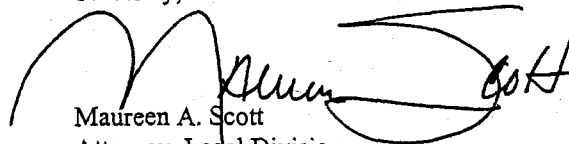
For each answer, please identify by name, title, and address each person providing information that forms the basis for the response provided.

These data requests are continuing, and your answers or any documents supplied in response to these data requests should be supplemented with any additional information or documents that come to your attention after you have provided your initial responses.

Please respond within ten calendar days of your receipt of the copy of this letter. *Please provide one complete set of all responses, in both hard copy and electronic format to each of the following addressees:*

- (1) Constance Fitzsimmons, Paralegal, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; [cfitzsimmons@cc.state.az.us](mailto:cfitzsimmons@cc.state.az.us)
- (2) Richard Boyles, Engineering Division, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; [rboyles@cc.state.az.us](mailto:rboyles@cc.state.az.us)

Sincerely,

  
Maureen A. Scott  
Attorney, Legal Division  
(602) 542-6022

MAS:daa  
Enclosures

cc: Mark A. DiNunzio, Cox Arizona Telcom, [Mark.dinunzio@cox.com](mailto:Mark.dinunzio@cox.com)

**ARIZONA CORPORATION COMMISSION STAFF'S  
FIRST SET OF DATA REQUESTS TO  
COX ARIZONA TELCOM, LLC  
Docket No.: T-03471A-05-0064  
March 8, 2005**

- STF 1.1 Please provide copies of any data requests served on CoxCom, Inc. ("CoxCom") by any other party in this docket and Cox's responses thereto.
- STF 1.2 Please identify each and every contact<sup>1</sup> between CoxCom and Shea Sunbelt Pleasant Point, L.L.C. ("Shea Sunbelt") regarding communications services<sup>2</sup> within the master planned development which has become generally known as Vistancia.
- STF 1.3 Please identify each and every contact between CoxCom and Vistancia Communications, L.L.C. ("Vistancia Communications") regarding communications services within the master planned development which has become generally known as Vistancia.
- STF 1.4 Please identify each and every contact between CoxCom and any other subsidiary of, affiliate of, or representative entity for, Shea Sunbelt regarding communications services within the master planned development which has become generally known as Vistancia.
- STF 1.5 Please identify each and every contact between CoxCom and Cox Arizona Telcom, L.L.C. ("Cox Telcom") regarding communications services within the master planned development which has become generally known as Vistancia.
- STF 1.6 Please identify each and every contact between CoxCom and any other subsidiary of, affiliate of, or representative entity for, CoxCom regarding communications services within the master planned development which has become generally known as Vistancia.
- STF 1.7 Please identify each and every contact between CoxCom and the City of Peoria ("Peoria") regarding communications services within the master planned development which has become generally known as Vistancia.

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<sup>1</sup> In the context of this and any subsequent data requests "contact" includes, but is not limited to any conversations, meetings or other forms of communication that addressed in any manner what has become known as the Multi-Use Easement and Indemnity ("MUE&I"), the Common Services Easements and Restrictions ("CSER") agreement, the Non-Exclusive License Agreement [Co-Marketing Agreement] ("NELA-CMA") or the Non-Exclusive License Agreement [Property Access Agreement] ("NELA-PAA") for Vistancia, or in general the provision of communications service (including local and long distance telephone service).

<sup>2</sup> "Communications Services" for the purpose of this and any subsequent data request means cable television service, community technology services, e-commerce transaction services, internet bandwidth access services, community intranet services, telephone services (local), telephone services (long distance), video on-demand services and security monitoring services or any other service which may be determined to be covered by the CSER, NELA-CMA or the NELA-PAA.

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COX ARIZONA TELCOM, LLC  
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March 8, 2005**

- STF 1.8 Please identify each and every contact between CoxCom and Qwest Corporation ("Qwest") regarding communications services within the master planned development which has become generally known as Vistancia.
- STF 1.9 Please identify each and every contact between CoxCom and any other subsidiary of, affiliate of, or representative entity for, Qwest regarding communications services within the master planned development which has become generally known as Vistancia.
- STF 1.10 Please identify each and every contact between CoxCom and Accipiter Communications ("Accipiter") regarding communications services within the master planned development which has become generally known as Vistancia.
- STF 1.11 For each any every contact identified in response to STAFF 1.2 though STAFF 1.10 provide:
- a) The name and titles of the individuals participating in the contact.
  - b) The dates such contracts were made.
  - c) The subject matter of such contact.
  - d) A copy of all notes, minutes, hand-outs or any other documentation that was referred to during the contact or that resulted from the contact.
  - e) A copy of all workpapers that may have been developed in preparation for, or resulted from, the contact.
- STF 1.12 Please provide a copy of the NELA-CMA.
- STF 1.13 Please provide a copy of the NELA-PAA.
- STF 1.14 Please identify the amounts and manner in which the license fess associated with the NELA-CMA will be allocated between CoxCom and its affiliates.
- STF 1.15 Please identify the amounts and manner in which the license fees associated with the NELA-PAA will be allocated between CoxCom and its affiliates.
- STF 1.16 Provide a cost study for each service, service package or service bundle provided by CoxCom for which the license fees associated with the NELA-CMA and NELA-PAA will be applicable. The study shall also include the retail price for each such service, service package or service bundle.
- STF 1.17 Please indicate if CoxCom is obligated to provide local and long distance telephone service under any of the agreements it has executed with Vistancia Communications, Shea Sunbelt, or any of their affiliates. If your response is yes, please provide a copy of all agreements which CoxCom has entered into

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March 8, 2005**

regarding the provision of local and long distance telephone service to the Vistancia development.

- STF 1.18 Please provide the cite to the Arizona Corporation Commission Order authorizing CoxCom to provide local and/or long distance telecommunications service within the State of Arizona.
- STF 1.19 Please provide a copy of any and all agreements between CoxCom and Cox Arizona Telcom regarding the provision of local and long distance telephone service to the Vistancia development.
- STF 1.20 Please provide a copy of any and all agreements between Vistancia Communications and Cox Arizona Telcom regarding the provision of local and long telephone distance service to the Vistancia development.
- STF 1.21 Please provide a copy of any agreements containing revenue sharing provisions entered into between either CoxCom or Cox Arizona Telcom and Vistancia Communications, or Shea Sunbelt, or the City of Peoria with respect to the provision of local and long distance telephone service in the Vistancia development.
- STF 1.22 Please provide a copy of any agreements containing any terms and conditions regarding the provision of local and long distance telephone service entered into between either CoxCom or Cox Arizona Telcom and Vistancia Communications to the Vistancia development.
- STF 1.23 Please confirm or deny: CoxCom has been designated as a Mandatory Communication Provider by Vistancia Communications for the Vistancia development.
- STF 1.24 Please confirm or deny: Cox Arizona Telcom has been designated as a Mandatory Communication Provider by Vistancia Communications for the Vistancia development.
- STF 1.25 Please state any and all conditions that CoxCom had to meet in order to be designated as a Mandatory Communication Provider by Vistancia Communications for the Vistancia development.
- STF 1.26 Please state any and all conditions that Cox Arizona Telcom had to meet in order to be designated as a Mandatory Communication Provider by Vistancia Communications for the Vistancia development.
- STF 1.27 Please list all Mandatory Communication Services CoxCom must provide to the Vistancia development as a result of it being designated a Mandatory Communication Provider and the terms and conditions (including rates) that it

**ARIZONA CORPORATION COMMISSION STAFF'S  
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will make local and long distance telephone services available to members of the development.

- STF 1.28 Please list all Mandatory Communication Services Cox Arizona Telcom must provide to the Vistancia development as a result of it being designated a Mandatory Communication Provider and the terms and conditions (including rates) that it will make local and long distance telephone services available to members of the development.
- STF 1.29 Please indicate whether Cox Arizona Telcom considers itself a provider of competitive telecommunications services within the Vistancia development. Please explain your response.
- STF 1.30 Please indicate whether either Cox Com or Cox Arizona Telcom paid an access fee to provide service to the Vistancia development. If your response is yes, please indicate the amount paid and to whom the payment was made.
- STF 1.31 Please indicate whether any portion of the access fee was waived by Vistancia Communications or Shea Sunbelt or its affiliates, and if so, why.
- STF 1.32 Please provide copies of any advertising brochures relating to the provision of communications services (including local and long distance telephone service) which are provided by either CoxCom, Cox Arizona Telcom, Vistancia Communications, or Shea Sunbelt or its affiliates.